



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-A-Y-

DATE: MAR. 26, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business development manager and consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and denied six subsequent motions to reopen.¹ Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The matter is now before us on a seventh motion to reopen. We will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

¹ *Matter of T-A-Y-*, ID# 1372194 (AAO June 26, 2018) was our most recent decision in this matter.

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Furthermore, in order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

The record includes an April 2005 diploma from [REDACTED] in Bulgaria stating that the Petitioner completed a “one year course of studies” and received a “Master’s degree” in Public Administration. The Petitioner also previously submitted a December 2017 “credential evaluation report” from USCES, LLC stating that her “Archival Certificate – Master’s Degree in Public Administration, issued by the [REDACTED] in April 2005 is the equivalent of a “Master’s Degree in Public Administration awarded by regionally accredited universities in the United States.”

In our previous decision, we noted that that the aforementioned evaluation from USCES did not state the number of semesters the Petitioner completed or the number of academic credits she was awarded. This evaluation also did not list the educational documents from [REDACTED] that the evaluator reviewed in reaching his conclusion. For example, the evaluation stated that it was based on an “Archival Certificate” from “the [REDACTED].” Accordingly, the record did not show that the credentials reviewed by the evaluator were the same educational documents that were submitted to the record in this case. The Petitioner was informed that she had not resolved these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

With the instant motion, the Petitioner resubmits the December 2017 evaluation from USCES and a screenshot from [REDACTED] website that provides a brief overview of the school’s Public Administration program. She requests that we accept the aforementioned credential evaluation without requiring “detailed course by course” information. The Petitioner, however, has not identified new facts supported by documentary evidence to meet the requirements of a motion to reopen and has not resolved the ambiguities discussed above. As explained in our previous decision, because the USCES evaluation did not adequately explain its conclusion that the Petitioner’s foreign diploma is equivalent to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A), it is insufficient to establish her eligibility as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner's motion repeats previous arguments that she satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). As discussed below, our review of the documentation provided on motion does not show that she meets at least three criteria.

In our prior decisions, we found that the Petitioner's degrees from [REDACTED] satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." With respect to the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B)-(F), the Petitioner's current motion to reopen does not include new facts or evidence to show that she satisfies any of those additional criteria.

The Petitioner submits documentation showing that she contributed to a June 2018 book entitled [REDACTED] her registration to attend [REDACTED] and information about that conference, and a webpage identifying her as a [REDACTED] board member.² The aforementioned book, conference, and board membership post-date the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1). The documentation offered on motion does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As explained in our prior decisions, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Furthermore, in our previous decision, we explained that she had not met the requisite three prongs set forth in the *Dhanasar* analytical framework. On motion, the Petitioner does not offer new facts or evidence relevant to our findings. In addition to not establishing the Petitioner's eligibility for the underlying immigrant classification, the aforementioned evidence that post-dates the filing of the petition does not render her eligible for a national interest waiver under the framework set forth in *Dhanasar*.

III. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability. Furthermore, as the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration

² She previously submitted a July 2017 certificate stating that she "has attained alumni status from [REDACTED] by successfully completing the [REDACTED] module 5."

benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-A-Y-*, ID# 2525500 (AAO Mar. 26, 2019)